

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
ALBERT LUCERO AND CARLOS BAEZ.

Plaintiffs,

-against-

THE CITY OF NEW YORK, NEW YORK CITY
POLICE DEPARTMENT, THE NEW YORK CITY
POLICE OFFICER SEAN KERN, SHIELD #10507,
INDIVIDULLY AND AS A POLICE OFFICER,
POLICE OFFICER RIVERA, SHIELD #696,
INDIVIDUALLY AND AS A, POLICE OFFICER,
SGT RICHARD RUIZ, 52nd PCT; INDIVIDUALLY
AND AS A POLICE OFFICER, POLICE OFFICER
BRIAN MAHON, 52ND PCT., INDIVIDUALLY AND
AS A POLICE OFFICER AND JOHN DOE #1-#10,
52nd PCT, SUED IN A FICTICIOUS CAPACITY,
IDENTITIES UNKNOWN

Defendants.

-----X

**SUMMONS WITH
VERIFIED COMPLAINT**

Index No.: 304151/2015
Dated Purchased: 9/30/15

Plaintiffs designate Bronx
County as the place of trial.
The basis of the venue is place
where the cause of action arose:

To the above named Defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve
a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of
appearance, on the Plaintiff's Attorney with twenty (20) days after the service of this summons,
exclusive of the day of service, (30) days after the service is complete, if the summons is not
personally delivered to you within the State of New York; and in case of your failure to appear or
answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
This day of , 2015

EMDIN & RUSSELL, LLP.
Jeffrey L. Emdin, Esq., as Counsel
Attorneys for Plaintiffs
499 Seventh Avenue, Floor 12N
New York, New York 10018
(212) 683-3995

Defendants address:

City of New York
c/o Corporation Counsel,
City of New York
100 Church Street
New York, New York 10007

Police Officer EDMUNDO RIVERA
Shield # 696
c/o 52nd pct.
3016 Webster Ave
Bronx, NY 10467

Sgt. Richard Ruiz
c/o 52nd pct.

Police Officer Kern
Shield # 10507
c/o 52nd pct.
3016 Webster Ave
Bronx, NY 10467

Police Officer Brian Mahon
c/o 52nd pct.
3016 Webster Ave
Bronx, NY 10467

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52nd PCT, SUED IN A FICTICIOUS CAPACITY,
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Defendants.

-----X

The plaintiffs, Albert Lucero and Carlos Baez by their attorneys, Emdin &
Russell, LLP complaining of the defendants, respectfully shows to this court and alleges:

1. Upon information and belief that at all times hereinafter mentioned, the
defendant, the City of New York, hereinafter referred to as "City", was, and still is, a municipal
corporation duly organized and existing under, and by virtue of, the laws of the State of New
York.
2. Upon information and belief at all times hereinafter mentioned, the defendant, the
City of New York, hereinafter certified to as "City", its agents, servants and/or employees
operated, maintained and controlled the New York City Police Department hereinafter referred
to as "NYPD", including all the police officers therein.

3. Upon information and belief, at all times hereinafter mentioned, and on the 4th day of October, 2014, Police Officer Edmundo Rivera, hereinafter referred to as "Rivera" was employed as a Police Officer by the "City" and/or "NYPD" and assigned to the 52nd pct. and at all relevant times set forth below acted in the capacity of a police officer. Upon information and belief Rivera's shield number is 696.

4. Upon information and belief at all times hereinafter mentioned and on the 11th day of October, 2014, "Rivera", was acting within the scope of his employment as a police officer and under the direction of the "City" as their agent, servant and/or employee

5. Upon information and belief, at all times hereinafter mentioned, and on the 11th day of October, 2014, Police Officer Sean Kern, hereinafter referred to as "Kern" was employed as a Police Officer by the "City" and/or "NYPD" and assigned to the 52nd pct. and at all relevant times set forth below acted in the capacity of a police officer. Upon information and belief Kern's shield number is 10507.

6. Upon information and belief at all times hereinafter mentioned and on the 4th day of October, 2014, "Kern" was acting within the scope of his employment as a police officer and under the direction of the "City" as their agent, servant and/or employee.

7. Upon information and belief, at all times hereinafter mentioned, and on the 11th day of October, 2014, Police Officer Mahon, hereinafter referred to as "Kern" was employed as a Police Officer by the "City" and/or "NYPD" and assigned to the PBBX Unit and/or 52nd pct. and at all relevant times set forth below acted in the capacity of a police officer.

8. Upon information and belief at all times hereinafter mentioned and on the 4th day of October, 2014, "Mahon" was acting within the scope of his employment as a police officer

and under the direction of the "City" as their agent, servant and/or employee.

9. Upon information and belief, at all times hereinafter mentioned, and on the 4th day of October, 2014, Police Officer John Does #1-#10, hereinafter collectively referred to as "Does" were employed as Police Officers by the "City" and/or "NYPD" and assigned to the 52nd pct. or the PBBX unit, and at all relevant times set forth below acted in the capacity of a police officers. They are being sued in a fictitious capacity as their identities are presently unknown.

10. Upon information and belief at all times hereinafter mentioned and on the 4th day of October, 2014, the "Does", were acting within the scope of his/their employment as a police officer and under the direction of the "City" as their agent, servant and/or employee

11. Upon information and belief, at all times hereinafter mentioned, and on the 4th day of October, 2014, Sgt. Richard Ruiz, hereinafter referred to as "Ruiz" was employed as a Police Officer by the "City" and/or "NYPD" and assigned to PBBX unit out of the 52nd pct., and at all relevant times set forth below acted in the capacity of a police officer.

12. Upon information and belief at all times hereinafter mentioned and on the 4th day of October, 2014, "Ruiz", was acting within the scope of his employment as a police officer and under the direction of the "City" as their agent, servant and/or servant. Upon information and belief Ruiz, on October 14, 2014 was Rivera's, Kern's, Mahon's and Does' supervisor.

13. Collectively Rivera, Kern, Mahon, Rivera, and the Does will hereafter be referred to as the "officers".

14. Upon information and belief, on October 4, 2014 the "officers", individually and/or collectively were acting under and required to follow the New York City Police Patrol Guidelines, Interim Orders and/or Administrative Orders

15. On the 4th day of October, 2014, plaintiff Alberto Lucero, hereinafter referred to as "Lucero" was a resident of the State of New York, County of Bronx.

16. On the 4th day of October, 2014, plaintiff Carlos Baez, hereinafter referred to as "Baez" was a resident of the State of New York, County of Bronx.

17. Collectively Lucero and Baez are also referred to as the "plaintiffs".

18. That on October 4, 2014, at approximately 8:10 p.m. the plaintiffs were lawfully inside the lobby of 20 West 190th Street, Bronx, New York, plaintiff Lucero's address, and hereinafter referred to as "the location".

19. At that time and location, the plaintiff observed approximately two officers, upon information and belief Kern and Rivera entered the lobby of the location with guns pointed at the plaintiffs.

20. The plaintiffs had not committed any crime and were not engaged in any criminal or suspicious activity, yet Kern and Rivera approached with guns drawn and ordered the plaintiffs to freeze and put their hands up.

21. Kern and Officer Rivera were informed that Lucero lived in the building, nevertheless they ordered Lucero to stand up and he was searched. The officers, Rivera and/or Kern, did not find any contraband.

22. Kern and/or Rivera searched Baez and did not find any contraband on him, yet he was placed in handcuffs.

23. When Lucero attempted to place himself in front of the lobby security camera, Rivera pushed him to a wall and Kern grabbed Lucero's legs and slammed him to the ground and dragged Lucero away from the camera area.

24. Baez was screaming "stop" "he didn't do anything", yet instead of stopping, Kern held Lucero while Rivera punched him.

25. Lucero was able to stand up, and he was struck again and fell to the ground. The aforementioned police officers continued to punch the plaintiff and placed handcuffs on him

26. Additional officers arrived on the scene including but not limited to, upon information and belief Ruiz, Mahon and John Does #1-#10. Upon information and belief not one officer reported the misconduct, interceded or accounted for Lucero's obvious injuries.

27. The plaintiff, Lucero, was taken out of the building in handcuffs and placed in a police car and transported to the 52nd pct.

28. Baez too was taken out of the building in handcuffs and transported to the 52nd pct.

29. Once at the precinct. Lucero was taken into a bathroom and made to remove all his clothing, squat and cough and was searched by Kern and Rivera, while they were laughing and making jokes.

30. Baez was also strip searched at the 52nd pct.

31. Both Baez and Lucero were placed in a locked holding cell with approximately 3-4 other individuals.

32. Baez and Lucero were fingerprinted and photographed.

33. The plaintiffs were eventually transported to Bronx Central Booking, and placed in a locked holding cell.

34. The plaintiffs were held in a locked cell at Bronx Central Booking until they were arraigned in Bronx Criminal Court on October 5, 2014.

34. Lucero was falsely charged with having committed the crimes of criminal possession of a controlled substance in the third degree, a felony, criminal possession of a controlled substance in the seventh degree, a misdemeanor and resisting arrest on docket number 2014BX053643.

35. The criminal court complaint was signed under penalty of perjury by Kern.

36. The criminal court complaint, signed by Kern, falsely accused the plaintiff, Lucero of possessing a brown paper bag containing numerous (33) small plastic bags of a white rock like substance, which Kern claimed to be crack/cocaine which was shoved by Lucero into his pants.

37. Kern further falsely states in the criminal court complaint that Lucero resisted arrest by flailing his arms, kicking his legs and twisting his body. All statements made by Kern were made with the intent to prosecute Lucero.

38. Baez was falsely charged with committing the crimes of resisting arrest and obstructing governmental administration in a criminal complaint bearing docket number 2014BX053644.

39. The criminal court complaint against Baez was signed under penalty of perjury by Kern.

40. Kern, in his statement on said complaint falsely stated that Baez grabbed his arms and pulled him away from Lucero. He further falsely stated that Baez resisted arrest by flailing his arms, kicking his legs and twisting his body.

41. Upon information and belief the arrests of the plaintiffs and the supporting paperwork filed by Kern was approved by Ruiz.

42. The plaintiff, Baez, was released on his own recognizance at arraignment on October 5, 2014.

43. That notice of each plaintiff's claim and notice of intention to sue for damages, the nature of the claim and the date of, the time when, the place where and the manner in which the claim arose were duly served upon the comptroller of the defendant "City".

44. The plaintiff, Lucero, submitted to a 50 h hearing on August 12, 2015.

45. That a stipulation adjourning Baez' 50(h) hearing due to pending criminal charges was entered into on September 23, 2015. As per said stipulation the plaintiff could file this complaint with the City reserving the right to conduct a 50 h hearing once Baez criminal case is resolved.

46. That more than 30 days have elapsed since the notice of claim and intention to sue has been served upon the defendants and the said defendants have neglected or refused to make any adjustment or payment thereof.

47. That this action is commenced within one year and 90 days after the cause of action arose.

48. It is hereby alleged, pursuant to CPLR 1603, that this action is exempt from the operation of CPLR 1601 from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.

AS AND FOR A FIRST CAUSE OF
ACTION ON BEHALF OF PLAINTIFF LUCERO
FOR FALSE IMPRISONMENT

49. The Plaintiff, Lucero, repeats, reiterates and realleges each and every allegation

contained in paragraphs marked "1" through "48" with the same force and effect as if more fully and at length set forth herein.

50. That beginning on or about the 4th day of October, 2014, at or about approximately 8:15 p.m. at or near the "location" until the plaintiff's release at arraignment on October 5, 2014, the defendants, their agents, servants and/or employees detained and imprisoned Lucero without any just cause or grounds.

51. That said imprisonment was caused by the defendants, their agents, servants, and/or employees, without any warrant or other legal process and without authority of the law and without any reasonable grounds, or cause to believe that the plaintiff was guilty of any crimes.

52. Lucero was wholly innocent of all criminal charges and did not contribute in any way or manner to his arrest and imprisonment by the defendants, their agents, servants and/or employees, and was forced to submit to the aforesaid arrest and imprisonment entirely against his will.

53. That the defendants, their agents, servants and/or employees, as set forth above, intended to confine Lucero; the plaintiff was conscious of the confinement; he did not consent to the confinement; and the confinement was not otherwise privileged.

54. That by reason of the aforesaid false imprisonment and detention, plaintiff, Lucero, was subjected to great indignity, humiliation and loss of freedom and the said plaintiff has been otherwise damaged.

55. That by reason of the aforesaid, Lucero has been damaged in an amount exceeding the jurisdictional limits of the lower courts.

AS AND FOR A SECOND CAUSE OF
ACTION ON BEHALF OF PLAINTIFF
LUCERO FOR FALSE ARREST

56. The plaintiff, Lucero, repeats, reiterates and realleges each and every allegation contained in paragraphs marked "1" through "55" with the same force and effect as if more fully and at length set forth herein.

57. That beginning on or about the 4th day of October, 2014, at or about approximately 8:15 p.m. at the "location", the plaintiff, Lucero, was handcuffed and placed under arrest by the defendants, their agents, servants and/or employees without any just cause or grounds, and held against his will under full force of arms..

58. That said arrest was caused by the defendants, their agents, servants, and/or employees, without any warrant or other legal process and without authority of the law and without any reasonable grounds, and based on an illegal stop and search of the plaintiff when the defendants lacked cause to believe that the plaintiff committed, or was about to commit a crime or was guilty of any crimes.

59. Lucero was wholly innocent of all criminal charges and did not contribute in any way or manner to his arrest and imprisonment by the defendants, their agents, servants and/or employees, and was forced to submit to the aforesaid arrest and imprisonment entirely against his will.

60. That the defendants, their agents, servants and/or employees, as set forth above, intended to seize, search, and arrest Lucero; that the plaintiff was conscious of the arrest and confinement; the Plaintiff did not consent to the arrest and confinement; and the arrest was not

otherwise privileged.

61. That all criminal charges were ultimately dismissed against Lucero.

62. That by reason of the aforesaid false arrest, plaintiff was subjected to great indignity, humiliation, physical and emotional injury, stress, economic loss, and loss of freedom, and the said plaintiff has been otherwise damaged.

63. That by reason of the aforesaid, Lucero has been damaged in an amount exceeding the jurisdictional limits of the lower courts.

AS AND FOR A THIRD CAUSE OF
ACTION ON BEHALF OF THE PLAINTIFF
LUCERO FOR ASSAULT AND BATTERY

64. The Plaintiff Lucero repeats, reiterates and re-alleges each and every allegation contained in paragraphs marked "1" through "63" with the same force and affect as if more fully and at length set forth herein.

65. That on the aforementioned date, time and location the plaintiff, Lucero, was seized, searched, held, struck, kneed, hit, dragged, threatened, handcuffed and strip searched by the defendant, "City", and the "NYPD" its agents/servants, and/or employees, including upon information and belief Kern and Rivera..

66. That all said contact was committed without the plaintiff's permission or consent.

67. That all said contact was unlawful and without privilege.

68. That all contact committed by defendants through their agents, servants, and/or employees, including defendants Kern and Rivera, was offensive to plaintiff and caused him to fear further contact and imminent harm, and caused plaintiff to sustain physical and/or

psychological injury. That the officers present failed to intervene stop or mitigate the use of force, including the use of excessive force from occurring.

69. That the above acts committed by the defendants constituted an assault and/or battery of the plaintiff.

70. That by reason of the aforesaid, Lucero has been damaged in a sum exceeding the jurisdictional limits of lower courts.

AS AND FOR A FOURTH CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF
LUCERO FOR NEGLIGENCE

71. The Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs marked "1" through "70" with the same force and affect as if more fully and at length set forth herein.

72. That the defendant, "City" was careless and reckless in hiring, retaining, training, failing to retrain, supervising, investigating, assigning, monitoring, disciplining and promoting as and for its employees, the named defendant officers Rivera, Kern, Does and Ruiz in that said employee(s) lacked the experience, deportment and ability to be employed by the defendants in the capacity in which they were utilized, i.e. as police officers; in that the defendant, "City" failed to exercise due care and caution in its hiring and promoting practices; in that the defendant "City" failed to investigate the above named employee's backgrounds; in that the City failed to properly train, supervise and monitor the 'officers; and in that that the defendant City was negligent in disciplining, retraining and retaining the named defendant officers;' and in that the defendants, their agents, servants and employees, were otherwise careless, negligent and

reckless, resulting in the harm and injury as described herein to Lucero.

73. That defendants "Rivera", "Kern", "Ruiz", "Mahon" and/or "Does" while acting within the scope of their employment, were negligent in that each failed to use such care in the performance of his police duties as a reasonably prudent and careful police officer would have used under similar circumstances; in that each was negligent, careless and reckless in the manner in which they investigated and/or performed his police duties; in that the police department permitted or condoned the false arrest, and/or false documentation submitted by these and other officers; and in that the defendants, their agents, servants and/or employees were otherwise careless, reckless and negligent.

74. That the aforesaid occurrence, to wit: assault and battery, false arrest and imprisonment, deprivation of property and the resulting injuries to mind and body therefrom, were caused wholly and solely by reason of the negligence of the defendants, its agents, servants and/or employees including the named defendants herein without any negligence on the part of the plaintiff, Lucero contributing thereto.

75. That by reason of the aforesaid, the plaintiff Lucero, was imprisoned, lost his freedom, was physically and emotionally injured and he was thereby damaged.

76. That by reason of the aforesaid, Lucero has been damaged in a sum exceeding the jurisdictional limits of the lower court.

AS AND FOR A FIFTH CAUSE OF ACTION:
ALLEGING VIOLATION OF CONSTITUTIONAL RIGHTS
UNDER 42 U.S.C. SECTION 1983, BY POLICE OFFICERS RIVERA, KERN, MAHON,
DOES AND RUIZ IN THEIR INDIVIDUAL CAPACITIES
AND AS AGENTS OF THE CITY OF NEW YORK, THE PLAINTIFF LUCERO
ALLEGES:

77. That plaintiff Lucero repeats, reiterates and realleges each and every allegation contained in paragraphs marked "1" through "76" with the same force and effect as if more fully and at length set forth herein.

78. That at all times hereinabove and hereinafter mentioned, the defendant "Rivera" was employed by the defendant The City of New York and/or The New York City Police Department and was acting under the color of his official capacity and his acts were performed under the color of the policies, statutes, ordinances, rules and regulations of the City of New York.

79. That at all times hereinabove and hereinafter mentioned, the defendant "Kern" was employed by the defendant The City of New York and/or The New York City Police Department and was acting under the color of his official capacity and his acts were performed under the color of the policies, statutes, ordinances, rules and regulations of the City of New York.

80. That at all times hereinabove and hereinafter mentioned, the defendant "Mahon" was employed by the defendant The City of New York and/or The New York City Police Department and was acting under the color of his official capacity and his acts were performed under the color of the policies, statutes, ordinances, rules and regulations of the City of New York.

81. That at all times hereinabove and hereinafter mentioned, the defendant "Ruiz" was employed by the defendant The City of New York and/or The New York City Police Department and was acting under the color of his official capacity and his acts were performed under the color of the policies, statutes, ordinances, rules and regulations of the City of New

York.

82. That at all times hereinabove and hereinafter mentioned, the defendants "Does" were employed by the defendant The City of New York and/or The New York City Police Department and was acting under the color of his/her/their official capacity and their acts were performed under the color of the policies, statutes, ordinances, rules and regulations of the City of New York.

83. That at all times hereinbefore and hereinafter mentioned, the defendant officers, individually and collectively, were acting pursuant to orders and directives from defendant, The City of New York.

84. That during all times hereinbefore and hereinafter mentioned, the defendants "officers" individually, and/or collectively acted under color and pretense of law, to wit: under color of the statutes, ordinances, regulations, customs and usages of The City of New York and/or New York City Police Department, and engaged in the illegal conduct set forth in this complaint to the injury of the plaintiff, Lucero, and deprived him of the rights, privileges and immunities secured to him by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States and the laws of the United States, and State of New York and U.S.C. Section 1983 and 1986.

85. That the unlawful and illegal conduct of defendants on the date, time and location stated hereinabove deprived plaintiff, Lucero of the following rights, privileges and immunities secured to him by the Constitution of the United States and of the State of New York:

a) The right of plaintiff to be secure in his person and effects against unreasonable search and seizure under the Fourth and Fourteenth Amendments to the Constitution of the

United States;

- b) The right to property
- c) The right to Due Process Law.
- d) The right to equal protection under the law.
- e) The right to be free from excessive force

86. That by reason of the aforesaid violations, use of force, use of arbitrary, excessive and sadistic force, seizure of plaintiff's person, his false arrest and false imprisonment, assault and battery, falsifying evidence, filing false reports, conspiracy and malicious prosecution the defendant Police "Officers" violated Lucero's rights and privileges as provided to him in the Constitution of the United States of America, and provided to him in the Constitution of the State of New York, and laws thereto, "the officers" and violated 42 U.S.C. §1983.

87. That as a direct proximate result of "the officers" actions plaintiff, Lucero, was subjected to great indignities and humiliation, physical injury, pain and distress of mind and body and was injured thereby.

88. That by reason of the aforesaid, Lucero was injured in mind and body, still suffers and upon information and belief, will continue to suffer great physical and mental pain,.

89. That by reason of the aforesaid, the plaintiff has been damaged in a sum of exceeding the jurisdiction of the lower courts, and seeks compensatory damages, plus, punitive damages, costs, attorneys fees, expert fees, as set forth and provided by 42 U.S.C. Section 1988, and such other relief as to the court may seem just and proper.

AS AND FOR A SIXTH CAUSE OF
ACTION ON BEHALF OF PLAINTIFF BAEZ
FOR FALSE IMPRISONMENT

90. The Plaintiff, Baez, repeats, reiterates and realleges each and every allegation contained in paragraphs marked "1" through "89" with the same force and effect as if more fully and at length set forth herein.

91. That beginning on or about the 4th day of October, 2014, at or about approximately 8:15 p.m. at or near the "location" until the plaintiff's release at arraignment on October 5, 2014, the defendants, their agents, servants and/or employees detained and imprisoned plaintiff, Baez without any just cause or grounds.

92. That said imprisonment was caused by the defendants, their agents, servants, and/or employees, without any warrant or other legal process and without authority of the law and without any reasonable grounds, or cause to believe that the plaintiff was guilty of any crimes.

93. The plaintiff, Baez was wholly innocent of all criminal charges and did not contribute in any way or manner to his arrest and imprisonment by the defendants, their agents, servants and/or employees, and was forced to submit to the aforesaid arrest and imprisonment entirely against his will.

94. That the defendants, their agents, servants and/or employees, as set forth above, intended to confine the plaintiff; the plaintiff was conscious of the confinement; he did not consent to the confinement; and the confinement was not otherwise privileged.

95. That by reason of the aforesaid false imprisonment and detention, plaintiff Baez

was subjected to great indignity, humiliation, economic loss, and loss of freedom and the said plaintiff has been otherwise damaged.

96. That by reason of the aforesaid, the plaintiff Baez has been damaged in an amount exceeding the jurisdictional limits of the lower courts.

AS AND FOR A SEVENTH CAUSE OF
ACTION ON BEHALF OF PLAINTIFF
BAEZ FOR FALSE ARREST

97. The plaintiff, Baez, repeats, reiterates and realleges each and every allegation contained in paragraphs marked "1" through "96" with the same force and effect as if more fully and at length set forth herein.

98. That beginning on or about the 4th day of October, 2014, at or about approximately 8:15 p.m. at the "location", the plaintiff Baez was handcuffed and placed under arrest by the defendants, their agents, servants and/or employees without any just cause or grounds, and held against his will under full force of arms..

99. That said arrest was caused by the defendants, their agents, servants, and/or employees, without any warrant or other legal process and without authority of the law and without any reasonable grounds, and based on an illegal stop and search of the plaintiff, Baez, when the defendants lacked cause to believe that the plaintiff committed, or was about to commit a crime or was guilty of any crimes.

100. The plaintiff was wholly innocent of all criminal charges and did not contribute in any way or manner to his arrest and imprisonment by the defendants, their agents, servants and/or employees, and was forced to submit to the aforesaid arrest and imprisonment entirely

against his will.

101. That the defendants, their agents, servants and/or employees, as set forth above, intended to seize, search, and arrest Baez; that the plaintiff was conscious of the arrest and confinement; the Plaintiff did not consent to the arrest and confinement; and the arrest was not otherwise privileged.

102. That by reason of the aforesaid false arrest, Baez was subjected to great indignity, humiliation, emotional injury, stress, economic loss and loss of freedom, and the said plaintiff has been otherwise damaged.

103. That by reason of the aforesaid, the plaintiff, Baez, has been damaged in an amount exceeding the jurisdictional limits of the lower courts.

AS AND FOR AN EIGHTH CAUSE OF
ACTION ON BEHALF OF THE PLAINTIFF
BAEZ FOR ASSAULT AND BATTERY

104. The Plaintiff Baez repeats, reiterates and re-alleges each and every allegation contained in paragraphs marked "1" through "103" with the same force and affect as if more fully and at length set forth herein.

105. The at the aforementioned date, time and location, the plaintiff Baez was seized, searched, held, threatened, handcuffed and strip searched by the defendant, "City", and the "NYPD" its agents/servants, and/or employees, including upon information and belief Kern and Rivera.

106. That all said contact was committed without the plaintiff's permission or consent.

107. That all said contact was unlawful and without privilege.

108. That all contact committed by defendants through their agents, servants, and/or employees, including defendants Kern and Rivera, was offensive to Baez and caused him to fear further contact and imminent harm, and caused plaintiff to sustain physical and/or psychological injury.

109. That the above acts committed by the defendants constituted an assault and/or battery of the plaintiff, Baez.

110. That by reason of the aforesaid, Baez has been damaged in a sum exceeding the jurisdictional limits of lower courts.

AS AND FOR A NINTH CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF
BAEZ FOR NEGLIGENCE

111. The Plaintiff Baez repeats, reiterates and re-alleges each and every allegation contained in paragraphs marked "1" through "110" with the same force and affect as if more fully and at length set forth herein.

112. That the defendant, "City" was careless and reckless in hiring, retaining, training, failing to retrain, supervising, investigating, assigning, monitoring, disciplining and promoting as and for its employees, the named defendant officers Rivera, Kern, Does and Ruiz in that said employee(s) lacked the experience, deportment and ability to be employed by the defendants in the capacity in which they were utilized, i.e. as police officers; in that the defendant, "City" failed to exercise due care and caution in its hiring and promoting practices; in that the defendant "City" failed to investigate the above named employee's backgrounds; in that the City failed to properly train, supervise and monitor the 'officers; and in that that the defendant City was

negligent in disciplining, retraining and retaining the named defendant officers;’ and in that the defendants, their agents, servants and employees, were otherwise careless, negligent and reckless, resulting in the harm as described herein to the plaintiff, Baez.

113. That on the aforementioned date, time and location the defendants “Rivera”, “Kern”, “Ruiz”, “Mahon”, and/or “Does” while acting within the scope of their employment, were negligent in that each failed to use such care in the performance of his police duties as a reasonably prudent and careful police officer would have used under similar circumstances; in that each was negligent, careless and reckless in the manner in which they investigated and/or performed his police duties; in that the police department permitted or condoned the false arrest, and/or false documentation submitted by these and other officers; and in that the defendants, their agents, servants and/or employees were otherwise careless, reckless and negligent.

114. That the aforesaid occurrence, to wit: assault and battery, false arrest and imprisonment, strip search and the resulting injuries to mind and body therefrom, were caused wholly and solely by reason of the negligence of the defendants, its agents, servants and/or employees including the named defendants herein without any negligence on the part of the plaintiff, Baez, contributing thereto.

115. That by reason of the aforesaid, the plaintiff Baez, was imprisoned, lost his freedom, was physically and/or emotionally injured and he was thereby damaged.

116. That by reason of the aforesaid, the plaintiff, Baez, has been damaged in a sum exceeding the jurisdictional limits of the lower court.

AS AND FOR A TENTH CAUSE OF ACTION:
ALLEGING VIOLATION OF CONSTITUTIONAL RIGHTS
UNDER 42 U.S.C. SECTION 1983, BY POLICE OFFICERS RIVERA, KERN, MAHON,
DOES AND RUIZ IN THEIR INDIVIDUAL CAPACITIES
AND AS AGENTS OF THE CITY OF NEW YORK, THE PLAINTIFF BAEZ ALLEGES:

117. That plaintiff Lucero repeats, reiterates and realleges each and every allegation contained in paragraphs marked "1" through "116" with the same force and effect as if more fully and at length set forth herein.

118. That at all times hereinabove and hereinafter mentioned, the defendant "Rivera" was employed by the defendant The City of New York and/or The New York City Police Department and was acting under the color of his official capacity and his acts were performed under the color of the policies, statutes, ordinances, rules and regulations of the City of New York.

119. That at all times hereinabove and hereinafter mentioned, the defendant "Kern" was employed by the defendant The City of New York and/or The New York City Police Department and was acting under the color of his official capacity and his acts were performed under the color of the policies, statutes, ordinances, rules and regulations of the City of New York.

120. That at all times hereinabove and hereinafter mentioned, the defendant "Mahon" was employed by the defendant The City of New York and/or The New York City Police Department and was acting under the color of his official capacity and his acts were performed under the color of the policies, statutes, ordinances, rules and regulations of the City of New York.

121 That at all times hereinabove and hereinafter mentioned, the defendant "Ruiz" was employed by the defendant The City of New York and/or The New York City Police Department and was acting under the color of his official capacity and his acts were performed under the color of the policies, statutes, ordinances, rules and regulations of the City of New York.

122. That at all times hereinabove and hereinafter mentioned, the defendants "Does" were employed by the defendant The City of New York and/or The New York City Police Department and was acting under the color of his/her/their official capacity and their acts were performed under the color of the policies, statutes, ordinances, rules and regulations of the City of New York.

123. That at all times hereinabove and hereinafter mentioned, the defendant officers, individually and collectively, were acting pursuant to orders and directives from defendant, The City of New York.

124. That during all times hereinafter mentioned, the defendants "officers" individually, and/or collectively acted under color and pretense of law, to wit: under color of the statutes, ordinances, regulations, customs and usages of The City of New York and/or New York City Police Department, and engaged in the illegal conduct set forth this complaint to the injury of the plaintiff, Baez, and deprived him of the rights, privileges and immunities secured to him by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States and the laws of the United States, and State of New York and U.S.C. Section 1983 and 1986.

125. That the unlawful and illegal conduct of defendants "officers" deprived plaintiff, Baez, of the following rights, privileges and immunities secured to him by the Constitution of the

United States and of the State of New York:

a) The right of plaintiff to be secure in his person and effects against unreasonable search and seizure under the Fourth and Fourteenth Amendments to the Constitution of the United States;

b) The right to Due Process Law.

c) The right to equal protection under the law.

126. That by reason of the aforesaid violations, use of force, use of arbitrary, excessive and sadistic force, seizure of plaintiff's person, his false arrest and false imprisonment, assault and battery, falsifying evidence, and malicious prosecution the defendant, Police "Officers" violated Baez' rights and privileges as provided to him in the Constitution of the United States of America, and provided to him in the Constitution of the State of New York, and laws thereto, "the officers" and violated 42 U.S.C. §1983.

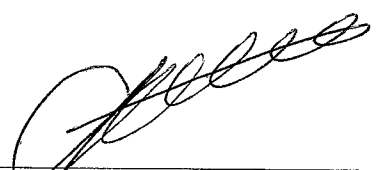
127. That as a direct proximate result of "the officers" actions plaintiff, Baez was subjected to great indignities and humiliation, economic loss, physical injury, pain and distress of mind and body and was injured thereby.

128. That by reason of the aforesaid, Baez was injured in mind and body, still suffers and upon information and belief, will continue to suffer great physical and mental pain,.

129. That by reason of the aforesaid, the Baez has been damaged in a sum of exceeding the jurisdiction of the lower courts, and seeks compensatory damages, plus, punitive damages, costs, attorneys fees, expert fees, as set forth and provided by 42 U.S.C. Section 1988, and such other relief as to the court may seem just and proper.

WHEREFORE, the plaintiffs demand judgment against the defendants in a sum to be determined by the trier of fact, plus costs, attorney's fees, punitive damages and such other and further relief as to the Court seems just and proper on the First through the Fifth causes of action for plaintiff Lucero and on the Sixth through the Tenth Causes of Action by the Plaintiff Baez..

DATED: New York, New York
 September , 2015



Jeffrey L. Emdin, Esq.,
Emdin & Russell, LLP.
Attorneys for the plaintiffs
499 Seventh Avenue, Floor 12N
New York, New York 10018
(212) 683-3995

ATTORNEY'S VERIFICATION

The undersigned, an attorney admitted to practice in the Courts of the State of New York certifies as follows:

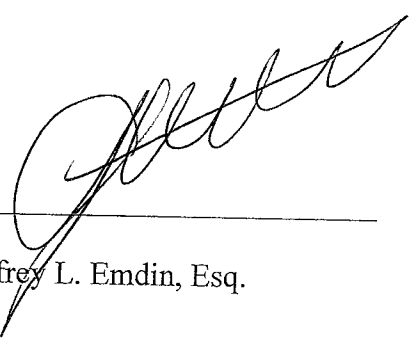
That I am an attorney associated with the law firm of Jeffrey L. Emdin, Esq., the attorneys of record for the Plaintiffs, Alberto Lucero and Carlos Baez, in the within action; that I have read the foregoing Summons and Complaint and know the contents thereof; that the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, I believe them to be true..

The undersigned further states that the reason this Summons and Complaint is made by me and not by the Plaintiffs is that the Plaintiffs do not reside within the county in which my office is located.

The grounds of my belief as to all matters stated upon my knowledge are my interviews with the Plaintiffs and a reading of the documents in my case file.

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: New York, New York
September, 2015



By: Jeffrey L. Emdin, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

ALBERT LUCERO AND CARLOS BAEZ.

Plaintiff(s),

-against-

THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT, THE NEW YORK CITY POLICE OFFICER SEAN KERN, SHIELD #10507, INDIVIDULLY AND AS A POLICE OFFICER, POLICE OFFICER RIVERA, SHIELD #696, INDIVIDUALLY AND AS A, POLICE OFFICER, SGT RICHARD RUIZ, 52nd PCT, INDIVIDUALLY AND AS A POLICE OFFICER, POLICE OFFICER BRIAN MAHON, 52ND PCT., INDIVIDUALLY AND AS A POLICE OFFICER AND JOHN DOE #1-#10, 52nd PCT, SUED IN A FICTICIOUS CAPACITY, IDENTITIES UNKNOWN
Defendant(s).

SUMMONS WITH VERIFIED COMPLAINT

LAW OFFICES OF EMDIN & RUSSELL, LLP
Attorneys for Plaintiff
499 Seventh Avenue, Floor 12N
New York, NY 10018
(212) 683-3995

To: City of New York
c/o Corporation Counsel
City of New York
100 Church Street
New York, New York 10007

The New York City Police Department
1 Police Plaza
New York, New York 10038

P.O. Edmundo Rivera
Shield # 696
c/o 52nd pct.
3016 Webster Ave
Bronx, NY 10467

P. O. Kern
Shield # 10507
c/o 52nd pct.
3016 Webster Ave
Bronx, NY 10467

P.O. Brian Mahon
c/o 52nd pct.
3016 Webster Ave
Bronx, NY 10467

Sgt. Richard Ruiz
c/o 52nd pct.

Pursuant to 22 NYCRR 130-1.0, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: September , 2015

Signature

Jeffrey L. Emdin, Esq.

PLEASE TAKE NOTICE

- [] NOTICE OF ENTRY
that the within is a (certified) true copy of a duly entered in the office of the
clerk of the within named court on
- [] NOTICE OF SETTLEMENT
that a of which the within is a true copy
will be presented for settlement to the HON. one of the judges of the, on

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

ALBERTO LUCERO AND CARLOS BAEZ.

Plaintiff(s),

-against-

THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT, THE NEW YORK CITY POLICE OFFICER SEAN KERN, SHIELD #10507, INDIVIDULLY AND AS A POLICE OFFICER, POLICE OFFICER RIVERA, SHIELD #696, INDIVIDUALLY AND AS A, POLICE OFFICER, SGT RICHARD RUIZ, 52nd PCT, INDIVIDUALLY AND AS A POLICE OFFICER, POLICE OFFICER BRIAN MAHON, 52ND PCT., INDIVIDUALLY AND AS A POLICE OFFICER AND JOHN DOE #1-#10, 52nd PCT, SUED IN A FICTICIOUS CAPACITY, IDENTITIES UNKNOWN,

Defendant(s).

ORDER TO SHOW CAUSE

LAW OFFICES OF EMDIN & RUSSELL, LLP
Attorneys for Plaintiffs
499 Seventh Avenue, Floor 12N
New York, NY 10018
(212) 683-3995

To: Corporation Counsel
City of New York
100 Church Street
New York, New York 10007

Pursuant to 22 NYCRR 130-1.0, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: January 6, 2016

Signature


Jeffrey L. Emdin, Esq.

PLEASE TAKE NOTICE

- ☐ NOTICE OF ENTRY
that the within is a (certified) true copy of a _____ duly entered in the office of the clerk of the within named court on _____
- ☐ NOTICE OF SETTLEMENT
that a _____ of which the within is a true copy
will be presented for settlement to the HON. one of the judges of the, on _____